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Before the  
Federal Communications Commission  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section )  
309 (j) of the Communications Act )  
Competitive Bidding )

PP Docket 93-253

Comments of  
Personal Communications Network Services of New York  
(PCNS-NY)  
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**Comments to  
The Notice of Proposal Rule Making**

**Personal Communications Network Services of New York, Inc. (PCNS-NY)** hereby submits the following comments:

PCNS-NY, one of the earliest contributors to the development of PCS, has performed innovative PCS experimentation that included the transmission of medical x-ray images using spread spectrum techniques and the development and implementation of spectrum solutions for voluntary migration of 2 GHz users relocating to higher frequencies or to fiber systems.

**Comments on Designated Entities**

The SBA administers a variable standard for determining whether an entity is small for purposes of obtaining financial assistance from a Small Business Investment Company (SBIC). The standard permits an applicant to qualify based on a net worth not in excess of \$6.0 million with average net income after Federal income taxes for the two preceding years not in excess of \$2.0 million. Alternatively, the applicant can qualify by showing that together with affiliates, and excluding affiliates, it meets the size standard for the industry in which it is primarily engaged as set forth in §121.601, See, 13 CFR 121.802(e)(2). Regarding the latter test, PCS fits the definition of a radiotelephone service that the Census Bureau includes in standard industrial classification code 4812. SBA standards define "small" in that SIC code as firms that employ 1,500 employees or less. 13 CFR 121.610. In addition, SBC guidelines contain provisions for waivers whereby applicable thresholds are increased by 25% whenever an applicant agrees to use the SBA's assistance within a "labor surplus area" or "redevelopment area." §121.802 (d).

PCNS-NY recognizes that the SBA standards are not tailored to meet the provisions of the Budget Reconciliation Act. The SBA standards are primarily targeted for applicants seeking federal funds not for applicants bidding for a government resource. However, Congress has directed the FCC to ensure its competitive bidding system will disseminate licenses among small

businesses and the Small Business Advisory Council believes that any size standards used should be consistent with the SBA's approach to eligibility for financial assistance from a SBIC.

PCNS-NY's years of experience in PCS experiments demonstrates that PCS will be a highly capital intensive business and it believes that the SBAC estimate of monies in excess of \$100 million being needed for PCS construction and deployment is conservative considering the additional costs of migration. However, PCNS-NY disagrees with the SBAC observation that the employment threshold of 1,500 would provide bidding preferences to "entities (that) face no special history of exclusion or economic disadvantage." There has been a long history of exclusion of emerging companies in the provision of local wireline communications and future PCS providers will also face economic disadvantages from the existing cellular and SMR carriers who did not have to pay for spectrum. The "small" winner of an auction in a given market faces then great economic disadvantage in any size market. A company like PCNS-NY operating in New York faces even greater economic disadvantage. A dominant "telephone" company winning an auction in New York (or elsewhere) could have over 40,000 employees working to meet its goals. To state that an endeavor with 1,500 employees or less face "no special history of exclusion or economic disadvantage" is too broadly drawn. The few SIC categories that have the 1,500 employees test represent huge industries requiring significant assets and are dominated by Fortune 500 companies. Wireless local communication must be put on a more equitable footing.

PCNS-NY supports the proposition that "Designated Entities" participate in the competitive bidding process to expand their participation in the ownership of spectrum. Further, PCNS-NY believes that "economic opportunity" includes employment as well as ownership and that the Congressional goal "to promote economic opportunities for the entities enumerated in the statute" <sup>1</sup> did not exclude employment as an economic opportunity. According, PCNS-NY supports an alternative standard of 1,500 employees and recommends that the elimination of women and minorities from the final count of employees will support the Congressional goal.

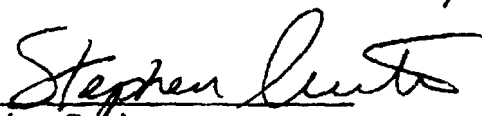
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<sup>1</sup>NPRM 93-253. pg. 22 Paragraph 72

The SBA guidelines contain provisions for waiver whereby applicable thresholds (e.g. employees) are increased 25% whenever an applicant agrees to use SBA assistance within a "labor surplus area" or "redevelopment area." If the waiver is appropriate after the fact, why not exclude such participants in the qualification test to clarify the test qualifications before application.

Finally, in light of our discussion above, any revision of the variable standards of net worth and net income that would accommodate the capital intensity of the PCS business would be supported by PCNS-NY. Further, the alternative test of 1,500 employees (for the applicant and affiliates) appears reasonable to accommodate the substantial task of competing against dominate carriers. Finally, PCNS-NY would seek to advance the "economic opportunity" of women and minorities beyond participating in ownership of spectrum to include favorable employment scenarios with the exclusion of these "designated entities" from any final count of employees in an alternative qualifying test.

Respectively submitted,  
PCNS-NY, Inc.

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Dated: November 10, 1993